Manitoba
Office of the Commissioner
Law Enforcement Review Agency (LERA)

# Annual Report
# 2002

Manitoba

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104-00755/

MINISTER OF JUSTICE
ATTORNEY GENERAL

Room 104
Legislative Building
Winnipeg, Manitoba, CANADA
R3C 0V8

The Honourable Peter Liba
Lieutenant-Governor of Manitoba

May It Please Your Honour:

It is my pleasure to present the 2002 Annual Report of the Law Enforcement Review Agency.

This report details the agency's accomplishments and activities for the 12-month period ending December 31, 2002.

I trust this meets with your approval.

Yours truly,

Honourable Gord Mackintosh
Minister of Justice
Attorney General

# Manitoba

**Justice**

Law Enforcement Review Agency

420-155 Carlton St.
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(204) 945-8667
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The Honourable Gord Mackintosh
Minister of Justice
Attorney General

Dear Minister:

I am pleased, pursuant to Section 45 of *The Law Enforcement Review Act*, to present the Law Enforcement Review Agency's annual report for the period of January 1, 2002 to December 31, 2002.

Yours truly,

George V. Wright
Commissioner

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# INTRODUCTION

*The Law Enforcement Review Act* requires the commissioner to submit an annual report concerning the performance of his duties and functions to the minister and each municipality in the province with an established police department. The minister shall table the report in the Legislature.

## LERA'S Mission Statement

The mission of the Law Enforcement Review Agency (LERA) is to deliver a judicious, timely, impartial, client-oriented service to the public and to the police services and police officers within its jurisdiction.

## *About LERA*

### What is LERA?

LERA is an independent, non-police agency, established under *The Law Enforcement Review Act* in 1985, to investigate public complaints about police.

LERA deals only with complaints about municipal police performance arising out of the performance of police duties. It does not investigate criminal matters.

LERA is staffed by a commissioner, registrar/office manager and professional investigators.

### To whom does the act apply?

The act applies to any peace officer employed by a Manitoba municipal police department, including police chiefs. It does not apply to members of the RCMP.

Complaints about members of the RCMP should be directed to the Commission for Public Complaints against the RCMP, at **www.cpc-cpp.gc.ca** or by calling, toll-free, 1-800-665-6878. Complaints about RCMP members received by LERA will be forwarded to the CPC.

### What does LERA investigate?

LERA investigates citizen allegations that municipal police officers have committed any of the following:

- abuse of authority, including:
    - making an arrest without reasonable or probable grounds
    - using unnecessary violence or excessive force
    - using oppressive or abusive conduct or language
    - being discourteous or uncivil
    - seeking improper monetary or personal advantage
    - serving or executing documents in a civil process without authorization
    - differential treatment without reasonable cause on the basis of any characteristic set out in subsection 9(2) of *The Human Rights Code*
- making a false statement or destroying, concealing or altering any official document or record
- improperly disclosing any information acquired as a member of the police department
- failing to exercise discretion or restraint in the use and care of firearms

- damaging property or failing to report the damage
- failing to assist where there is a clear danger to the safety of a person or property
- violating the privacy of any person within the meaning of *The Privacy Act*
- contravening any part of *The Law Enforcement Review Act* that does not specify a penalty for the violation
- assisting, counseiling or causing any person to commit officer misconduct

**Who may complain?**

Any person who feels wronged by the conduct or actions of a municipal police officer in Manitoba may file a complaint.

A complaint may also be filed on behalf of another person. LERA must obtain consent from that person before acting on the complaint.

**How is a complaint filed?**

A complaint must be made in writing and signed. Date, time, location and other details are important. LERA staff or members of the local police service will help prepare a complaint if asked.

A written complaint may be submitted directly to LERA, a police chief or any member of a municipal police department. Police will forward complaints to LERA.

**Are there time limits?**

The act requires a complaint to be submitted within 30 days of the incident. The commissioner may extend that limit if there are valid reasons for being unable to submit the complaint on time.

The commissioner may also extend the 30-day filing limit to avoid conflict with court proceedings or ongoing criminal investigations involving a complaint.

**How is a complaint investigated?**

LERA has professional investigators who interview witnesses, take statements and review reports such as official police records and medical reports. LERA investigators conduct all inquiries they believe are necessary to uncover relevant evidence.

LERA may be contacted at any time to inquire about the status of a complaint. The commissioner remains open to discussion with all parties before making a final determination.

**Preliminary screening of complaint**

After the investigation, the commissioner will screen the complaint to determine whether there is a reason not to take further action on it. The act requires the commissioner to do this. A decision will be made by the commissioner to take no further action if any one of the following situations arise:

- the alleged conduct does not fall within the scope of any officer misconduct
- the complaint is frivolous or vexatious
- the complaint has been abandoned by the complainant
- there is not enough evidence to justify referring the complaint to a provincial judge for a public hearing

If the commissioner decides to close the matter and take no further action, the complainant will be notified in writing. The complainant will then have 30 days from the date of the decision to ask the commissioner to refer the matter to a provincial judge for review. Reviews are arranged by LERA at no cost to the complainant.

**Does a complainant need a lawyer?**

The complainant does not require a lawyer when dealing with LERA. The complainant and the police officer are entitled to legal representation during the process. They must arrange for such services themselves.

If a complainant applies for legal aid and is declined, he/she may, in exceptional circumstances, make a request to the minister of justice to appoint a lawyer to represent him/her at a hearing.

Respondent police officers are generally represented by a lawyer under employment contract.

**How are complaints resolved?**

The act provides several ways to resolve complaints.

*Informal Resolution:*

The commissioner must try to resolve the complaint through informal mediation. Both the complainant and the respondent officer must agree to this process before it can take place. If the complaint is resolved informally to the satisfaction of both the complainant and the respondent police officer, no further action is taken and no record of the incident is made on the officer's service record.

*Admission of Disciplinary Default:*

A respondent police officer can admit to the alleged officer misconduct. The commissioner then reviews the officer's service record and consults with the police chief before imposing a penalty.

*Referral to Judge for Hearing:*

If a complaint cannot be resolved informally, and there is no admission of officer misconduct, the commissioner must refer the complaint to a provincial judge for disposition at a public hearing.

Penalties that may be imposed by the provincial judge on the respondent officer(s) as noted in *The Law Enforcement Review Act* are:

- dismissal
- permission to resign, or summary dismissal if the resignation is not received within seven days
- reduction in rank
- suspension without pay for up to 30 days
- loss of pay for up to 10 days
- loss of leave or days off for up to 10 days
- a written reprimand
- a verbal reprimand
- an admonition

## *LERA as an Agency*

The Law Enforcement Review Agency (LERA) is an agency of the Manitoba Department of Justice, Criminal Justice Division, mandated under *The Law Enforcement Review Act*.

The Lieutenant-Governor in Council charges the minister of justice, as a member of the executive council, with the administration of *The Law Enforcement Review Act*.

*The Law Enforcement Review Act* authorizes the Lieutenant-Governor in Council to appoint a commissioner.

The commissioner carries out investigations in compliance with *The Law Enforcement Review Act* and has powers of a commissioner under Part V of *The Manitoba Evidence Act*.

LERA is staffed by a commissioner, a registrar/office manager, and two investigators.

LERA's address is:

420-155 Carlton Street
Winnipeg, Manitoba, R3C 3H8
Telephone: (204) 945-8667 or toll-free in Manitoba 1-800-282-8069
Facsimile: (204) 948-1014

E-mail: lera@gov.mb.ca

Website: www.gov.mb.ca/justice/lera

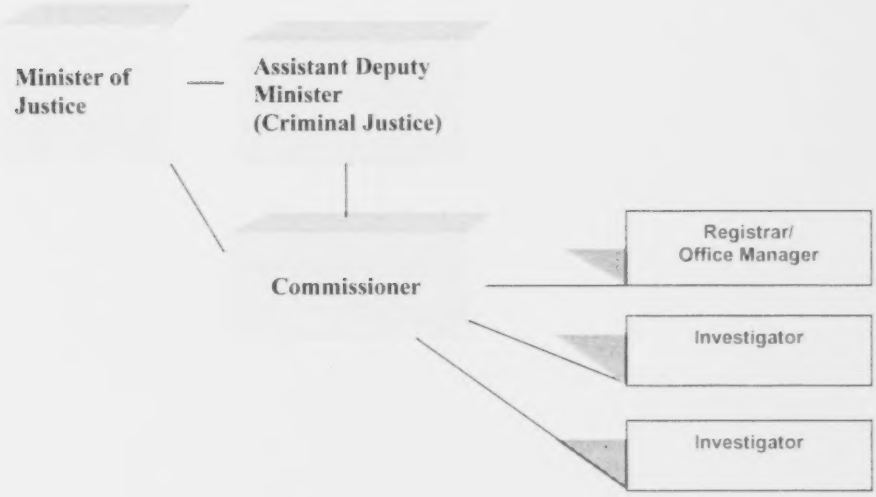
## LERA'S Organizational Structure

The commissioner is required to submit an annual report concerning the performance of his duties and functions to the minister and to each municipality in the province, which has established a police department.

From an administrative perspective, the commissioner reports directly to Criminal Justice Division's Assistant Deputy Minister.

LERA's budget for the financial year beginning April 1st, 2001 and ending March 31st, 2002 is as follows:

| | |
|---|---|
| Full Time Employees | 4 |
| Total Salaries | $225.9 |
| Total Other Expenditures | $ 48.1 |
| Total | $274.0 |



## LERA'S Organizational Structure

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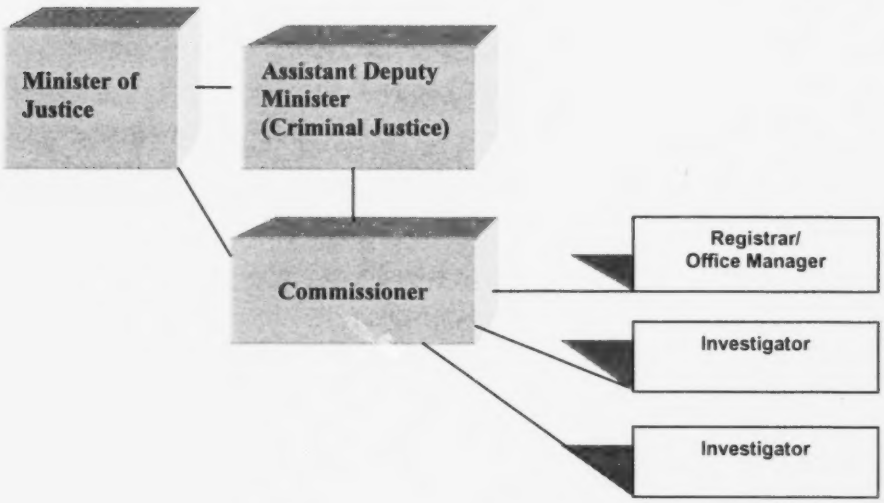

## Activities

During the year, the commissioner and staff:

- participated in meetings and discussions with police executives, regular police service members and municipal officials
- participated in the Manitoba Bar Association's Law Day open house at the Manitoba Law Courts Complex
- met with the Assistant Deputy Minister of Justice on a regular basis
- met with Executive and Board Members of the Winnipeg Police Association
- made presentations to Winnipeg Police Service recruit classes
- attended graduation ceremonies for Winnipeg Police Service recruit classes
- attended Federal Government's Department of Justice training session on Bill C-24, Organized Crime and Law Enforcement, Bill C-36, Anti-terrorism Act in Ottawa, Ontario
- attended Brandon Police Service appreciation dinner
- attended Winnipeg Police Service's open house
- met with Director, Manitoba Justice Information Systems and commenced discussion on the design of a new records management system utilizing MS.Net Technology
- met officials of the Southeast Tribal Council
- attended the National Association for the Civilian Oversight of Law Enforcement (NACOLE) conference in Cambridge, Ma.
- attended the Canadian Association for the Civilian Oversight of Law Enforcement Conference (CACOLE) in St. John's, Newfoundland
- moderated a panel at the CACOLE conference titled "Recent Developments in First Nations Policing Oversight". Panel participants included representatives of the Federation of Saskatchewan Indian Nations, Chief of Kitigan Zibi Anishinabeg Police Department and President of the Association of First Nations Chiefs of Police, Quebec, RCMP Northwest Regional Aboriginal Officer, "K" Division Headquarters, Edmonton, Alberta, and Director General Aboriginal Policing Directorate, Department of the Solicitor General, Ottawa, Canada

## Acknowledgements

- Members of the public who make their complaints and concerns known to LERA
- Complainants and respondents who are able to resolve their differences by informal resolution
- Chiefs of police of Manitoba's municipal police services
- Police associations and members of Manitoba's municipal police services
- Legal counsel acting for complainants and respondents
- Manitoba Justice officials for their assistance and expertise
- LERA's staff, whose competence and commitment are vital to LERA's success as a civilian oversight agency
- The many other stakeholders involved in the LERA process

***Informal Resolution of Complaints***

> *Pursuant to section 15, the commissioner makes available to the complainant and respondent a process that can potentially allow them to come to an informal resolution of the complaint. This process is often, but not always, successful in resolving the matter. To be successful, the informal resolution process must satisfy each of the parties involved in the complaint. There is no single model by which a complaint can be successfully resolved informally. Sometimes, it is sufficient that the police officer explain to the complainant the responsibilities of the police and the reason a certain action was necessary. Other times, a complainant will seek an apology and the police officer will be prepared to offer it. In some cases, the heart of the complainant's concern is damage that was caused to certain property and the resolution involves reimbursement for those damages.*

The following are examples of complaints resolved informally in 2002:

- A woman went to a police station to ask for help in getting her personal belongings from her ex-common law husband's apartment. The officer refused because the police had helped her get her belongings two months earlier. He told her police policy only assists once in these cases. The woman left without receiving assistance.

*The woman went back to the same police officer a few days later. He apologized to her for his previous comments and helped her get her belongings. The woman considered the matter was resolved informally.*

- A woman took her 14-year-old son to the police station to report that his new bike had been stolen from school property. She said the officer who took her complaint was rude and obnoxious. When the son couldn't produce the serial number for the bike, the officer questioned why he bothered to come to the police station.

  The officer also said that the son could have just thrown the bike away. When the officer asked for their home address, the woman gave it to him, then said he was glad her son didn't get lost because he never would find his way home.

*Several weeks later, the woman took her son to the police station again to report another bike theft and threats made against him. They dealt with the same officer. On this occasion, the officer was pleasant. Because of the marked difference in officer's attitude, the woman felt he must have had a bad day the first time, and that her complaint had been resolved.*

- A man was arrested for impaired driving and taken to the police station for a breathalyzer test. He asked for a drink of water, explaining that the medication he was taking causes considerable thirst. He was told to use his hands under a tap in the utility sink. The man's breath test results showed he was not sufficiently impaired to warrant charges, but he was given a 24-hour licence suspension. The police got professional advice on side effects of the medication and the crown did not lay charges because of the medication.

  The man was concerned he was not given a drink of water after the breath test. When the officer involved was told about side effects of the medication, he agreed the man should have been given a drink of water. He also took steps to ensure proper drinking facilities would be available for prisoners in similar circumstances.

*The complaint was resolved when the man was told of the officer's response to his concerns.*

## Case Summaries

- A woman complained to police about a domestic dispute. The matter went to court and the man involved was prohibited from contacting her. The police went to the woman's house to see if the man had contacted her. While one officer spoke with the woman, the other went around the house and looked in a bedroom window. He saw the man run into the bedroom and hide in the closet. Both officers then entered the house and arrested the man for breaching his court order. The woman became angry with the officers for arresting the man and accused the officers of being physically and verbally abusive to her in front of the children.

*The complaint was resolved with a meeting between the woman and the officers.*

- A woman, employed by a local credit union, went to a district police office to file a complaint of fraud, on behalf of her company. She went to the police station closest to her office to save time. The officer she dealt with was rude and refused to take her complaint and told her to use another district office. She went to the other office and received courteous service. She confirmed with the second officer that complaints could be made at any district office.

*The complaint was resolved when the woman was told about the results of an interview with the offending officer.*

- A man driving his car made a U-turn on a street in front of oncoming traffic and sped up so he would not impede this traffic. One of the approaching cars changed lanes and passed him and then moved back into his lane ahead of him. This car then had to stop quickly for a red light and the man ran into it. The driver of the other car got out of his car and angrily confronted the man. The other man identified himself as a police officer and his female passenger identified herself as an officer too. The police driver threatened to charge the man with several traffic offences and the man told him he was going to file a complaint against the officer. When the man went to the police station to file his complaint, the other driver arrived, carrying his uniform. This other man tried to serve the man with 2 traffic tickets but the man refused to accept them. Another officer intervened and said that an independent officer would have to decide whether any charges should be laid. The man heard nothing for about 3 months.

  Just days after the officer driver had been interviewed about the man's complaint against him, the man was given a traffic ticket relating to the accident. The man felt that the timing of the ticket was not just a coincidence and that it was clearly retaliation for the complaint against the officer.

*The complaint was resolved with a meeting between the man and the officer.*

- A woman was driving a car, with three passengers. When she stopped at a red light, a grey van pulled up beside her. A youth in the van made some comments, and an argument started with one of her passengers. At the next intersection, the youths in the van got out. The woman backed away to escape, with the youths chasing her and kicking at her car. She got away and the van caught up to her. Something was thrown at her car before the van turned off and left the area.

  When the police investigated the matter, the officer spoke to the parents of the van driver. The parents wanted to pay for the damage to the woman's car so the officer gave them the woman's name and phone number.

  The officer then left the woman a voice message explaining what he had done. This frightened the woman, as she felt the youths could possibly find out where she lived and cause her more problems. Upon hearing of the woman's fears, the officer went back to the van owners and retrieved the woman's name and phone number.

*The woman felt that the officer's follow up action showed that he had acted in good faith and she considered her complaint resolved informally.*

**Reviews by Provincial Judge of Commissioner's Decision to Take No Further Action**

*When the commissioner declines to take further action on a complaint, the complainant may apply to the commissioner to have the decision reviewed by a provincial judge. Section 13(2) of The Law Enforcement Review Act stipulates that the commissioner must receive this application within 30 days after the date the decision was sent to the complainant.*

The following is a sample of these applications.

- A man called police saying he was assaulted by his brother. There had been an argument about excessive water use and consumption of too much food and the argument became a shoving match. When the officers arrived, there was no evidence of assault and they made no arrest. The man said the police told him to fight it out with his brother and to use a hockey stick. He also said the police report showed that he did not want charges laid.

  The officers were interviewed and said both the man and his brother were generally unco-operative. The police had made several suggestions to resolve the dispute but neither brother agreed. The police report was incomplete, because it had not included the police's suggestions. Both officers denied making any comment about fighting it out or using a hockey stick.

  The commissioner declined to take further action, because there was not enough evidence for a public hearing.

  The man asked to have a provincial judge review the commissioner's decision.

  *DECISION*: The provincial judge agreed with the commissioner's decision.

******

- A man complained that a police officer came to his door in the evening and pepper sprayed him in the face. He named the officer he believed did it. He said his wife had called a hospital and that he went to a medical clinic before he spoke to a LERA investigator to file his complaint.

  The LERA investigator found the officer in question was not on shift the night in question. The unit's records showed that no police vehicles had been at the man's residence. A check with the hospital showed the man's wife had not called at any time and that the man himself had called the next day, 24 hours after the incident. A check with the medical clinic showed that the man went there four hours after initially talking to the LERA investigator rather than before as he had said.

  The commissioner declined to take further action, because there was not enough evidence for a public hearing.

  The man asked to have a provincial judge review the commissioner's decision.

  *DECISION: The provincial judge stated there was no evidence for a public hearing and agreed with the commissioner's decision not to take further action.*

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- A man was stopped at an accident scene where a tow truck was parked on the road with its lights flashing, and blocking both northbound lanes of traffic. He saw another man, who he thought to be the tow truck driver, sweeping up sand and debris from the road. When the light turned green, he

drove cautiously past the tow truck and over some of the debris. After some distance, he noticed that he was being chased by a police car. When he stopped, the officer was verbally abusive to him about driving through an accident scene.

When the officer was interviewed, he said that he had stopped the man because he had nearly run over the truck driver and that he had driven through an accident scene.

When the tow truck driver was interviewed, he said that the man came flying through and nearly hit him. The tow truck driver also said he yelled at the man and swung his broom at the man's car.

The commissioner declined to take further action, because there was not enough evidence for a public hearing.

The man asked to have a provincial judge review the commissioner's decision.

*DECISION: The provincial judge agreed with the commissioner's decision.*

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- A woman worked in a police office for several years and then left to become a private businessperson. Shortly after, she received a letter from a senior police officer saying that she had taken some staff lists, which she appeared to be using to solicit business. When she called the officer to challenge this, she said he became verbally abusive to her so she hung up on him.

  When the officer was interviewed, he denied being verbally abusive. He said the conversation with the woman began cordially but deteriorated quickly and the call ended with the woman hanging up on him.

  The commissioner declined to take further action, as there was not enough evidence for a public hearing.

  The woman asked to have a provincial judge review the commissioner's decision.

*DECISION: A hearing date was set but, before the hearing took place, the woman decided to withdraw her application.*

******

- A man complained that a police officer had made a false statement in a court assistance report, which resulted in his driver's licence being suspended by the motor vehicle branch. He subsequently appealed the suspension, and succeeded.

  When the officer who wrote the report was interviewed, he denied making a false statement but agreed it was ambiguous and differed from the police narrative report.

  The commissioner declined to take further action, as there was not enough evidence for a public hearing. The man asked that a provincial judge review the commissioner's decision.

*DECISION: The provincial judge disagreed with the commissioner's decision and directed the matter be referred for a hearing.*

******

- A woman complained she was riding in a car driven by an acquaintance when the car was stopped by police. She was rudely told by a police officer to get out of the car and then told to get out of the area in 30 below weather. She objected to being yelled at and made to walk in very cold weather. The woman admitted to the LERA investigator that she was wearing a fur coat, boots and gloves. When the officers were interviewed, they said that they had observed the woman, who is a known prostitute, speak with the driver of the car and then get into his car after he had made a U-turn near her. They then decided to stop the vehicle, as they believed that an offence had taken place. While one officer's recollection of the event was quite minimal, the other officer clearly remembered it. He said the woman was not yelled at to get out of the car and that she got out of her own accord. The vehicle had been stopped within a short distance of two hotels.

  The driver of the vehicle was also interviewed. He confirmed the officer's version of events that the woman got out of his vehicle on her own accord and that there were no yelling or loud voices by anyone. He also said that the woman had been wearing a fur coat and the officer he dealt with was very professional. He believed that the woman was a prostitute.

  The commissioner declined to take further action, as there was not enough evidence for a public hearing. The woman asked to have a provincial judge review the commissioner's decision.

  *DECISION: The provincial judge agreed with the commissioner's decision.*

******

- A man was driving a car with four passengers when he smashed into a traffic light. The fire department suspected the man was impaired and called police. The man was agitated and stayed outside while his passengers were in the fire truck. When the police asked him about the accident the man denied being the driver. He was so agitated he had to be handcuffed. One of the officers spoke to the man's passengers who said the man was the driver. When the officer came back to the police car, the man was still agitated and complained about the handcuffs being too tight. When the officer checked the handcuffs, the man said the officer pushed his flashlight into the man's throat and told him to shut up.

  When the officers were interviewed, they denied that either of them had pushed his flashlight into the man's throat. The LERA investigator was able to interview two of the four passengers. One passenger had seen the man in the back seat of the police car but nothing else. The other passenger saw the officer put his flashlight against the man's throat and push it against him.

  The commissioner declined to take further action, as there was not enough evidence for a public hearing.

  The man asked to have a provincial judge review the commissioner's decision.

  *DECISION: The provincial judge reviewed the LERA file and noted a discrepancy between the LERA investigator's notes and what was written in the commissioner's letter to the man about the flashlight against the man's throat. He referred the matter back to the commissioner for whatever further action the commissioner decides is necessary.*

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***Legal Developments - Reviews by a Provincial Judge of the Commissioner's Decision to Take No Further Action***

*(1) Standard of Review*

In the 2000 Annual Report, it was reported that the commissioner had been taking an active role at review hearings. This was being done for the purpose of addressing a particular issue: the appropriate standard of review that should be applied by a provincial judge reviewing the commissioner's decision to take no further action. At the time, it was further reported that as a result of that issue being raised by the commissioner, Judge Chartier delivered Reasons for Decision on the point on May 30, 2000, in *LERA Complaint No. 3599*.

The discussion of this issue and Judge Chartier's decision appears at page 32 of the 2000 Annual Report. It was noted that Judge Chartier had held that provincial judges should be reviewing the commissioner's decisions with greater scrutiny than they had been using until then. Prior to Judge Chartier's decision, provincial judges had been using the patent unreasonableness standard of review – with the result being that provincial judges would only overturn the commissioner's decision if the provincial judge could be shown that the commissioner had committed some kind of flagrant or overriding and palpable error. Under this standard of review, a typical complainant would have much less of a chance to get the commissioner's decision overturned.

Out of a sense of fairness to complainants, the commissioner has routinely been arguing that provincial judges should not be using a standard that is unnecessarily deferential to the commissioner. The commissioner is committed to the notion of openness and accountability to the parties to complaints. As such, if a complainant wants to have the commissioner's decision reviewed for error, then a complainant ought to be entitled to have that review conducted in a manner that does not unreasonably favour only one of the parties.

Essentially, Judge Chartier held that provincial judges should no longer be using the patent unreasonableness standard. Instead, they should be using the correctness or reasonableness standards of review. Which of the two standards is to be used in any given case will depend on the nature of the issue being reviewed. But the result, ultimately, is that Judge Chartier set the tone for provincial judges conducting future reviews to be more vigilant and exacting when reviewing the commissioner's decisions for error. Which is, in fact, precisely what has happened.

Subsequent to the release of Judge Chartier's decision, the commissioner became very vocal about bringing that decision to the attention of other provincial judges conducting reviews. And almost invariably, other provincial judges have been following the approach established by Judge Chartier.

*(2) Burden of Proof*

In addition to the above category of developments, there were other developments that occurred in the context of section 13(2) reviews. One notable such development is that provincial judges have been refusing to conduct reviews whenever a complainant fails to attend the hearing set for the review. In large measure, this trend can be traced to the wording of subsection 13(4), which provides that the "burden of proof" at a review is on the complainant:

*(3) Abandonment or Withdrawal of Application for Review*

In other contexts, provincial judges are dealing with complaints by holding that they have been "abandoned" or "withdrawn" by complainants.

***Public Hearings before a Provincial Judge***

*Public hearings under The Law Enforcement Review Act (TLERA) are held before provincial judges. They do not sit in their usual capacity as a member of the provincial court. A public hearing will only take place after a matter has been referred by the commissioner under Section 17.*

*Where a public hearing has been referred by the commissioner, Section 27(2) of* TLERA *states: "The provincial judge hearing the matter shall dismiss a complaint in respect of an alleged disciplinary default unless he or she is satisfied on clear and convincing evidence that the respondent has committed the disciplinary default."*

*The "clear and convincing evidence" standard was brought into the act in 1992. It is not worded the same as the more traditional standards that are used in other contexts. In criminal cases the standard is "beyond a reasonable doubt" -- which was used in the act until 1992. In civil cases, the standard is "balance of probabilities."*

*Provincial judges have ruled in past cases that since LERA's hearings are, in fact, civil proceedings, the standard of proof was "balance of probabilities" and not "clear and convincing evidence."*

*The provincial judges also ruled that "clear and convincing evidence" simply means the quality of evidence necessary to meet the standard of proof on a "balance of probabilities."*

Public Hearings on the Merits of Complaints – 2002

Complaint: A woman received a number of hang up phone calls over several nights and initiated the call trace feature to find out who was calling. When she reported the calls to the police, their investigation showed that one of the calls had come from one of their own officers' cell phone.

Officer Misconduct – One Police Officer

Section 29(a)(iii), *The Law Enforcement Review Act*, abuse of authority by using oppressive or abusive conduct or language.

Disposition: The officer who owned the cell phone is no longer a member of the police department. He moved to another province and works on another police force. The officer did not attend the hearing and instructed his lawyer not to attend or present any evidence on his behalf.

The judge dismissed the complaint against the officer based on the fact that, although it was the officer's cell phone being used, it was not proven to the judge's satisfaction that the officer had made the call.

The complainant has since filed an appeal of the judge's decision to the Court of Queen's Bench.

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Complaint: A woman was riding her bicycle on a street and was nearly struck by a car that made a wide turn. One of the occupants yelled at her and laughed about just missing her. She got the licence number and reported it to police. She insisted that charges be laid, because she could identify the driver. The officers continued their investigation and a ticket was given to the driver of the car. The woman was told what had been done and waited to be called to testify. When she heard nothing from the court, she called

to find out what was happening and was told the charge was stayed because the officer noted on the ticket that she could not identify the driver.

*Officer Misconduct – One Police Officer*

Section 29(b), *The Law Enforcement Review Act*, abuse of authority by making a false statement.

*Disposition*: The judge dismissed the complaint because even though the officer did not present the best case for prosecution, he did indicate that the registered owner of the car could be called to court to prove who was driving. The judge felt that the prosecutor should share the responsibilities for the case not proceeding in court. The complainant appealed the judge's decision but the appeal was dismissed at Court of Queen's Bench.

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*Complaint*: A woman was driving with a male passenger when the police stopped her. The officer smelled marihuana when he approached the car and searched her car using a police dog. The woman complained she had not been told her rights and that her car was unlawfully searched. She also complained that the officer was verbally abusive to her.

*Officer Misconduct – One Police Officer*

Section 29(a), *The Law Enforcement Review Act*, abuse of authority by failing to inform the woman of her rights under the *Canadian Charter of Rights and Freedoms*.

Section 29(a), *The Law Enforcement Review Act*, abuse of authority by conducting a search of a vehicle without lawful authority.

Section 29(a)(iv), *The Law Enforcement Review Act*, abuse of authority by being discourteous or uncivil to the complainant.

*Disposition*: Just prior to the hearing, the lawyer for the officer interviewed the woman about what evidence she was going to present at the hearing. When she told the lawyer she had a tape recording of what was said, the lawyer reassessed his defence. He asked if she would agree to resolve the matter informally. The woman agreed. At the hearing, the judge allowed the request to resolve the matter informally and adjourned the hearing.

******

*Complaint*: A woman took her son to the police station to file a criminal complaint against several students who had allegedly assaulted her son at school. During the interview, she was describing what happened to her son when the officer bluntly told her to shut up because he was not talking to her. The woman was shocked and embarrassed by this treatment from the officer in front of her son.

*Officer Misconduct – One Police Officer*

Section 29(a)(iv), *The Law Enforcement Review Act*, abuse of authority by being discourteous or uncivil.

*Disposition*: This case was originally heard in 2000 when the judge found the officer guilty of the misconduct. The case was adjourned for a penalty hearing. The penalty hearing took place in 2002 and the judge imposed a sentence of admonition on the officer.

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## Case Summaries

*Complaint*: A man was in his house with two women when police conducted a drug raid. During the raid, drugs and a shotgun were seized. The man was injured during the arrest.
After the arrest, the man's lawyer wrote to LERA asking for an extension of time for the complainant to file his written complaint. The commissioner gave the extension. The letter specified that the written complaint had to be received by LERA within one year of the incident or within 30 days of disposal of the related charges whichever came first. A few days before the year was up, the man's lawyer wrote to LERA to advise that the related charges had been disposed of and that the written complaint would be provided.

When no written complaint was received with the lawyer's letter, the commissioner wrote to the man asking for his written complaint and forwarded him the LERA complaint form which also needed to be signed. Within a month, the signed LERA form came back but did not include the written complaint. Another letter was sent by the commissioner, and the man brought in his written complaint three months later.

*Officer Misconduct – Four Police Officers*

Section 29(a)(ii), *The Law Enforcement Review Act*, abuse their authority by using unnecessary violence or excessive force.

*Disposition:* At the hearing, the lawyer for the officers filed a motion for dismissal on the grounds that the written complaint was not filed within the time limits allowed. The man's lawyer argued that his letters to the commissioner were within the time limits even though the specifics of the complaint against the officers were not submitted until after the time limit.

The judge noted that *The Law Enforcement Review Act* does not allow lawyers or agents to file a complaint and provide the particulars without the signature of the complainant and satisfaction of the time constraints.

He ruled that the written complaint was outside the time limits and dismissed the case against the officer.

******

*Complaint:* A man walked across the street against a Don't Walk sign. A police officer at that corner called to him to return to his side of the street. The man refused. The officer crossed the street and attempted to have the man return to the other side of the street and cross again when the pedestrian Walk sign came on again. The man refused again and started to walk away. The officer followed him and continued to be abusive to him. The man explained that he had a broken tooth, causing him pain and that he was on his way to the dentist's office. He gave the officer his identification and told the officer to just give him the ticket and to quit trying to treat him like a child. The officer followed him into the dentist's office and confirmed that he was going to be there awhile. The officer left to get a ticket and returned shortly after to serve it on him while he was in the dentist's chair.

*Officer Misconduct – One Police Officer*

Section 29(a)(iv), *The Law Enforcement Review Act*, abuse of authority by being discourteous or uncivil.

*Disposition:* The officer did not attend the hearing. The officer had left the police service and moved to another province.

The judge commented that he found it rather odd that the officer would not return to attend the hearing.

The judge accepted the evidence of the complainant and found the officer in default. He adjourned the hearing to determine the appropriate penalty.

After reviewing the complaint, the judge felt the appropriate penalty was an admonition, pursuant to Section 30(1)(i) of *The Law Enforcement Review Act*.

******

***Legal Developments - Public Hearings Before A Provincial Judge***

*(1) Commissioner's Allegations of Disciplinary Default*

On October 5, 2001, in LERA Complaint #3610, Judge Howell delivered reasons for decision on a matter of general importance to the operation of *The Law Enforcement Review Act*. The issue, raised before trial by the respondent police officers, was whether the commissioner could refer to the provincial judge an allegation of a disciplinary default that was not specifically raised within the four corners of the initial complaint.

The commissioner, when drafting the formal terms of reference for the hearing, had made four separate allegations of disciplinary default. Three of the allegations could be traced directly into the original complaint, but the particulars for the fourth allegation were only uncovered as a result of the commissioner's investigation into the complaint. The respondent police officers objected to the inclusion of this fourth allegation, arguing it amounted to an entirely new complaint under the act. By then, the complainant would have been out of time to file a complaint regarding the fourth allegation. The commissioner intervened and argued the fourth allegation had been properly put before the provincial judge.

Judge Howell held that the fourth allegation was properly before him. He reasoned that, while the particulars for the fourth allegation had not been expressly alleged in the initial complaint, the allegation was nevertheless related to the same situation about which the complaint had been made. As such, he found that the act permitted the commissioner to include the additional allegation in such circumstances.

*(2) Clear and Convincing Evidence*

On March 12, 2002, in LERA Complaint #2895, Judge Thompson delivered reasons for decision on a matter of general importance to the operation of *The Law Enforcement Review Act*. The issue was about the application of the standard of proof in establishing that a respondent police officer committed a disciplinary default.

The standard is set directly in *The Law Enforcement Review Act*. Section 27(2) requires the complainant to satisfy the provincial judge with "clear and convincing evidence" that a disciplinary default occurred. Usually, the standard of proof that needs to be met will be one of the more common standards. For instance, in most civil proceedings, the standard of proof is "the balance of probabilities", while in most criminal proceedings, the standard of proof is "beyond a reasonable doubt". Because the act uses a different standard, Judge Thompson addressed in his reasons what this alternative standard of proof means.

Argument on the point was advanced on behalf of the complainant only, as the respondent police officer refused to attend the hearing and had instructed his counsel not to participate.

In his reasons, Judge Thompson considered earlier decisions made by other judges, and held as follows:

> " ... *I conclude that the Complainant must satisfy a relatively high standard of proof. The standard is higher than mere probability. I need not be satisfied beyond a reasonable doubt, but must be convinced on clear evidence.* "
>
> An appeal of Judge Thompson's decision is pending in Queen's Bench.

*(3) Obligations of the Police When Receiving a Complaint*

On November 4, 2002, in LERA Complaint #3675, Judge Howell delivered extensive reasons for decision on a matter of general importance to the operation of *The Law Enforcement Review Act*. The issue, raised before trial by the respondent police officers, was whether a complaint had been properly made and handled under the act.

For this particular complaint, the concern about police officers' conduct was first raised, not by the person actually aggrieved by the conduct of police officers (i.e. the "complainant"), but by an acquaintance of the complainant. The acquaintance raised the concern by writing, on April 30, 1996, directly to the municipal police service in question. The incident occurred on April 6, 1996, and the acquaintance requested the matter be directed to "the appropriate department".

The police service referred the letter to the officer in charge of the relevant division, who responded by writing to the acquaintance on May 21st. He asserted it was his responsibility to deal with the matter, and failed to make any mention of the Law Enforcement Review Agency. He then explained he would not discuss the details of an incident with a third party, and offered instead to meet with the complainant (perhaps together with the acquaintance) to discuss the matter. Alternatively, he offered to respond in writing to the complainant, but only if the complainant requested it. By letter dated June 12th, the complainant wrote and requested a response, but that letter never made its way to the officer in charge. Nevertheless, the officer in charge initiated internal review proceedings, which would eventually be completed, but without the complainant's knowledge.

Eventually, the complainant contacted a lawyer, which resulted in the complainant raising the issue directly with the Law Enforcement Review Agency in January of 1999. The commissioner reviewed the situation and concluded that the original letter written by the acquaintance on April 30, 1996, was a third party complaint under the act and was filed in time.

The complaint would eventually be referred to a hearing on the merits, but the respondent officers raised preliminary motions, arguing that neither the commissioner nor the provincial judge had jurisdiction to deal with the matter. The commissioner intervened, arguing there was jurisdiction. The police chief of the police service in question also intervened, supporting the argument of the respondent officers. Ultimately, Judge Howell concluded that the letter of April 30, 1996, written by the acquaintance, was a third party complaint. He held that it had properly been made in time (i.e. within 30 days of the alleged incident).

Before coming to his final conclusion, Judge Howell noted that the complaint had met all of the necessary pre-conditions to be a complaint under the act, and that this was not in dispute as between the parties. For instance, the complaint had been made by the acquaintance against a member of the police service. It contained particulars of the complaint. It was in writing and signed by the acquaintance. The officer in charge was a person as described in section 6(3)(c) of the act, and the complaint was made within thirty days of the date of the alleged disciplinary default.

The point of difference between the parties, Judge Howell explained, was about the manner that the initial letter received from the acquaintance should have been handled after if was received by the police service. The commissioner argued it should have been forwarded to LERA to be dealt with in accordance with the act. The respondent officers (together with the police chief) argued that, because there was no specific request for the matter to be referred to LERA and no mention was even made of LERA, the letter amounted to a mere request for the issue to be referred to the appropriate department together with a request by the acquaintance to be contacted with a response. It was not, they argued, a complaint under the act. In their view, not all matters need to be referred to the Law Enforcement Review Agency; moreover, this was not a matter that needed to be referred to LERA because it had been dealt with in a manner otherwise approved by statute. That is, it had been dealt with in accordance with an internal disciplinary proceeding that was housed in regulations made under the municipality's general governing statute. By contrast, the commissioner took the position that, once there is compliance with all of the pre-conditions set out in section 6 of the act, then there is a strict obligation on the police officer who receives the complaint to forward it to the Law Enforcement Review Agency.

In beginning his discussion of the issue, Judge Howell framed the question as follows:

> " *The question to consider is when a complaint that meets all of the criteria identified in section 6 of the act is received by a member of a police department but no specific reference is made to the Law Enforcement Review Agency, is it then the option of the member to forward the complaint to an internal discipline procedure set out under Provincial regulations? There is no suggestion, [the officer in charge] made any reference to the Law Enforcement Review Agency when dealing with [the acquaintance], or the complainant and gave no information whatsoever to the Law Enforcement Review Agency about the issues raised by [the acquaintance].* "

He went on to explain it would be ineffective to a significant degree if police officers who receive complaints had the option of not referring them to LERA. The complaint procedure is specific and what constitutes a complaint is specific. Complaints are time sensitive and the process relies on a duty of those receiving the complaints to submit them to LERA in a timely manner. As such, Judge Howell was not persuaded that the discipline procedure established under the general municipal statute was some sort of parallel procedure that could be used if a police officer receiving the complaint deemed it appropriate to do so. *The Law Enforcement Review Act* takes precedence over any internal disciplinary proceedings, and Judge Howell ultimately concluded:

> " *I am satisfied the legislature intended The Law Enforcement Review Act to have priority in reviewing complaints regarding police conduct rather than simply jurisdiction concurrent to internal disciplinary procedures. The fact the internal disciplinary procedures of the [police service] are established under regulations of another provincial statute does not affect this priority.* "

Judge Howell also dismissed an argument raised by the respondent officers that the hearing should not proceed because of unreasonable delay. He held that the administrative law test, which has been established by the Supreme Court of Canada, and which requires proof of significant prejudice, was not established.

An appeal of Judge Howell's decision is pending in Queen's Bench.

*(4) Filing and Notice Requirements for a Complaint*

On January 23, 2002, in LERA Complaint #3238, Judge Rubin delivered Reasons for Decision on a matter of general importance to the operation of *The Law Enforcement Review Act*. The issue raised before trial by the respondent police officers, related to the manner that the filing and notice requirements in the act operate.

The incident was alleged to have occurred on December 21 and 22, 1996. On December 31, 1996, counsel for the complainant wrote to LERA and asked that the time to file a complaint be extended until after the criminal prosecution would be completed. The commissioner granted the request under subsection 6(7) of the act. Eventually, this gave the complainant one full year to file the complaint - meaning he had until December 22, 1997 to file.

On December 17, 1997 - five days before the time to file would expire - counsel for the complainant wrote to the commissioner, advising the complainant wished to proceed with the complaint. Nothing else was included in the letter. The formal complaint document was only later completed and signed by the complainant; it was postmarked February 4, 1998. Particulars of the complaint were disclosed even later than that. The respondent officers argued that the complaint had been filed out of time.

Judge Rubin held that the earliest possible date the complaint could be considered to have been filed was February 4, 1998. He rejected the argument advanced by the complainant that the letters that had been written and signed by counsel for the complainant could amount to a complaint under the act. Section 6(3) of the act provides "Every complaint shall be in writing signed by the complainant setting out the particulars of the complaint", and Judge Rubin wrote:

> " *It is obvious, by virtue of the specific provision of the act that the act does not contain the provision which allows counsel or an agent to file the complaint and provide the particulars without the signature of the complainant, and satisfaction of the time constraints.* "

Judge Rubin accordingly held the complaint had been filed out of time, and he was therefore without jurisdiction to hear the complaint.

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**Contributing Causes**

Section 22 of *The Law Enforcement Review Act* states:

*" When the commissioner identifies organizational or administrative practices of a police department which may have caused or contributed to an alleged disciplinary default, the commissioner may recommend appropriate changes to the chief of police and to the municipal authority which governs the police department".*

The complainant's vehicle was stolen, recovered the same day and stored in a commercial towing compound. A settlement was reached with the insurance company. Two and one-half months later the complainant was notified by another police force that her vehicle had been recovered.

The complainant questioned the conduct of the police officer pertaining to the investigation and recovery of the vehicle. The vehicle licence plates were clearly visible and had not been checked resulting in the owner not being notified of the recovery of the vehicle.

After the investigation was complete, the commissioner determined that the police officer had not committed a disciplinary default.

The commissioner recommended to the chief of police that operational policy be developed clarifying an officer's responsibility when conducting stolen vehicle investigations.

## STATISTICAL ANALYSIS

- LERA's jurisdiction extends to 14 police services with a police officer complement of 1,321. Total population served is 720,229.

- Winnipeg Police Service accounts for 86 per cent of complaints made to LERA. Dakota Objibway Police Service accounts for seven per cent, Brandon Police Service for six per cent, and other forces account for the remainder.

- There were 372 files opened in 2002, the second highest number of complaints received in a year, second only to 1999. The five-year average is 347.

- The 227 formal complaints filed are the highest ever recorded. By contrast, the number of complaints resolved at intake, without a formal complaint being filed, is at its second lowest level. This is directly attributable to improved client service by LERA staff at intake and after preliminary investigation. Clients need to be heard and while this is often very time consuming and requires patience, an improved level of client satisfaction is the result.

- The number of investigations carried over from the year 2001, combined with new complaints for the year 2002, continues to be high and taxes LERA staff. In 2001 there were 436 total investigations, while there were 430 in 2002, a slight decrease.

- There was an increase in the number of investigations completed over the previous year, from 212 to 235.

- 38 percent of files opened in 2002 were closed as a result of a complaint not being received, or, after a preliminary investigation.

- The average length of time to complete investigations decreased to 12 months from 13 months in 2002.

- For 2002, there is an increase in the number of allegations of disciplinary defaults recorded in the five main categories: abuse of authority, arrest without reasonable or probable grounds, using unnecessary or excessive force, using oppressive or abusive conduct or language and being discourteous or uncivil. This is due to a greater scrutiny of complaints by LERA staff at intake. Where more than one allegation of disciplinary default is possible, a more concerted effort is being made to identify the default at the outset.

- Complaints under the main category of abuse of authority include, but are not limited to, allegations of breaches of the *Canadian Charter of Rights and Freedoms*, unlawful arrests, unlawful searches, and breaches of *The Intoxicated Persons Detention Act*.

- The number of complaints alleging the misuse of pepper spray and handcuffs remains consistent.

- Incidents alleging injuries from use of force remains constant for the second year in succession.

- Informal resolution of complaints has decreased. As a public service agency, LERA actively supports and, whenever possible, engages in alternative dispute resolution aimed at restoring social harmony between affected parties. This method of complaint resolution remains a priority.

## STATISTICAL ANALYSIS

- Complainants' requests for reviews by a provincial judge of the commissioner's decision increased for the second straight year. This is due, in part, to the commissioner's administrative law responsibility to inform a complainant about their right to request a review.

- The recording of time to complete investigations in Tables 14 and 15 has been refined to more accurately reflect the time spent on investigations. The midpoint of the range of months is now used to calculate time rather than the top number. For example, in the 4-7 month range, the midpoint is 5.5 months whereas the top number is 7 months.

- LERA is not mandated to conduct criminal investigations. Where a matter before the commissioner or a provincial judge discloses evidence that a member may have committed a criminal office, the commissioner or provincial judge shall report the possible criminal offence to the attorney general. In recent years, if there is an inference of criminal misconduct, LERA investigators will inform the complainant that a criminal complaint may also be made to the police force where the incident occurred. Over the last five years the number of criminal complaints filed directly with the police has increased significantly. Alternatively, the legislative requirement for the commissioner to report criminal offences to the attorney general has decreased. See Tables 11 and 12.

## 2002 Statistical Report – Data Tables

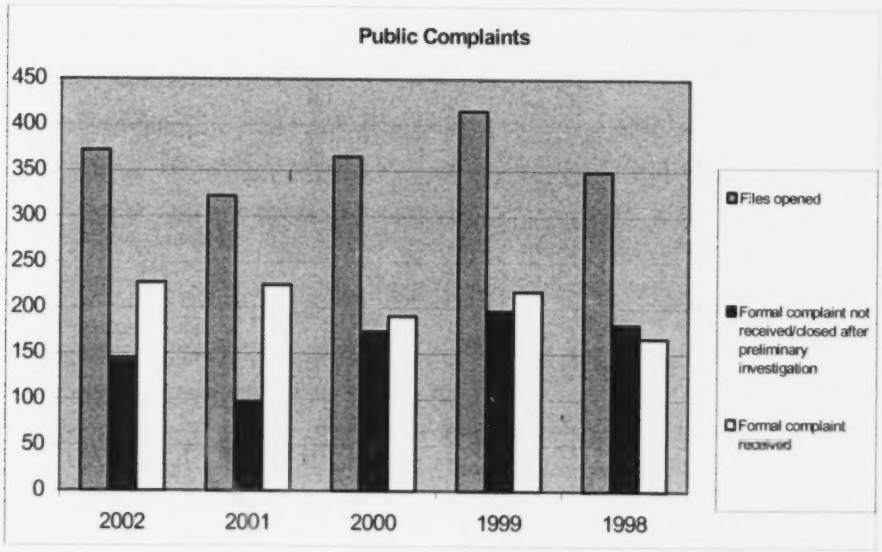
| Table 1: Complaints by Police Service | Police Officers ** | Population *** | 2002 (n=227) | 2001 (n=225) | 2000 (n=191) | 1999 (n=218) | 1998 (n=167) |
|---|---|---|---|---|---|---|---|
| Altona | 6 | 3,434 | 0 | 0 | 1 (0.5%) | 0 | 3 (2%) |
| Brandon | 68 | 39,716 | 14 (6%) | 16 (7%) | 22 (12%) | 24 (11%) | 19 (11%) |
| Dakota Ojibway | 26 | 5,923 | 17 (7%) | 0 | 1 (0.5%) | 0 | 0 |
| RM East St. Paul | 10 | 7,677 | 0 | 2 (1%) | 0 | 0 | 0 |
| Morden | 7 | 6,142 | 0 | 0 | 0 | 1 (0.45%) | 3 (2%) |
| Rivers | 3 | 1,119 | 0 | 1 (0.5%) | 0 | 0 | 0 |
| Ste. Anne | 3 | 1,513 | 0 | 0 | 1 (0.5%) | 3 (1%) | 0 |
| Winkler | 11 | 7,943 | 0 | 0 | 0 | 1 (0.45%) | 1 (1%) |
| Winnipeg | 1181 | 619,544 | 195 (86%) | 206 (91%) | 165 (86%) | 189 (87%) | 141 (84%) |
| *RM Cornwallis | 1 | 3,779 | 0 | 0 | 0 | 0 | 0 |
| *RM Springfield | 1 | 12,602 | 0 | 0 | 0 | 0 | 0 |
| *RM St. Clements | 2 | 9,115 | 0 | 0 | 0 | 0 | 0 |
| *RM Victoria Beach | 1 | 265 | 1(1%) | 0 | 0 | 0 | 0 |
| *RM of Whitehead | 1 | 1,457 | 0 | 0 | 0 | 0 | 0 |
| **Total** | **1321** | **720,229** | **100%** | **100%** | **100%** | **100%** | **100%** |

*Supplementary police service – RCMP have primary responsibility

**Source: municipal police services

***Source: Statistics Canada, Indian and Northern Affairs, Canada and Dakota Objibway Police Service

| Table 2: Public Complaints | 2002 | 2001 | 2000 | 1999 | 1998 |
|---|---|---|---|---|---|
| Files opened | 372 | 322 | 365 | 415 | 349 |
| Formal complaint not received/closed after preliminary investigation | 145 | 97 | 174 | 197 | 182 |
| Formal complaint received | 227 | 225 | 191 | 218 | 167 |



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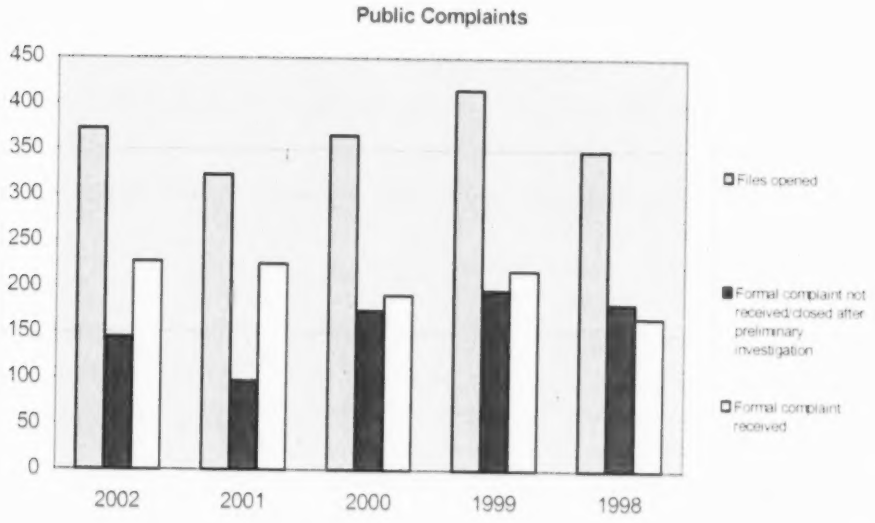
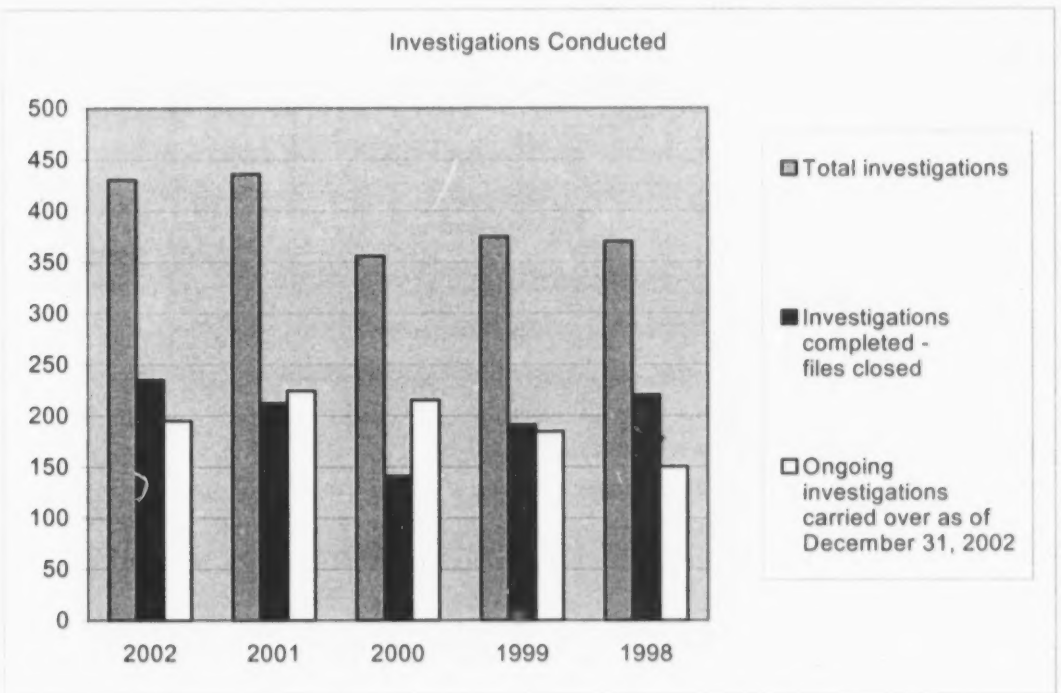


| Table 3: Investigations Conducted | 2002 | 2001 | 2000 | 1999 | 1998 |
|---|---|---|---|---|---|
| Total investigations | 430 | 436 | 356 | 375 | 370 |
| Investigations completed - files closed | 235 | 212 | 141 | 191 | 220 |
| Ongoing investigations carried over as of December 31, 2002 | 195 | 224 | 215 | 184 | 150 |



| **Table 4: Complainant's Allegations: Discipline Code Section 29 *The Law Enforcement Review Act*** | **2002** | **2001** | **2000** | **1999** | **1998** |
|---|---|---|---|---|---|
| Abuse of authority sec. 29(a) | 137 | 121 | 60 | 94 | 40 |
| Arrest without reasonable or probable grounds sec. 29(a)(i) | 24 | 25 | 18 | 7 | 16 |
| Using unnecessary or excessive force sec. 29(a)(ii) | 108 | 111 | 77 | 77 | 80 |
| Using oppressive or abusive conduct or language sec. 29(a)(iii) | 110 | 101 | 59 | 84 | 53 |
| Being discourteous or uncivil sec. 29 (a)(iv) | 107 | 82 | 76 | 71 | 45 |
| Seeking improper personal advantage sec. 29(a)(v) | 0 | 0 | 0 | 1 | 0 |
| Serving civil documents without proper authorization sec. 29(a)(vi) | 0 | 2 | 2 | 0 | 2 |
| Discrimination sec. 29(a)(vii) | 13 | 15 | 12 | 9 | 6 |
| Making false statement(s) sec. 29(b) | 9 | 7 | 3 | 7 | 1 |
| Improperly disclosing information sec. 29(c) | 3 | 2 | 4 | 8 | 2 |
| Failing to exercise care or restraint in use of firearm sec. 29(d) | 0 | 2 | 1 | 1 | 2 |
| Damaging property or failing to report damage sec. 29(e) | 9 | 0 | 7 | 3 | 3 |
| Failing to provide assistance to person(s) in danger sec. 29(f) | 6 | 2 | 1 | 8 | 2 |
| Violating person's privacy (under *The Privacy Act*) sec. 29(g) | 1 | 0 | 1 | 2 | 1 |
| Contravening *The Law Enforcement Review Act* sec. 29(h) | 0 | 0 | 0 | 0 | 0 |

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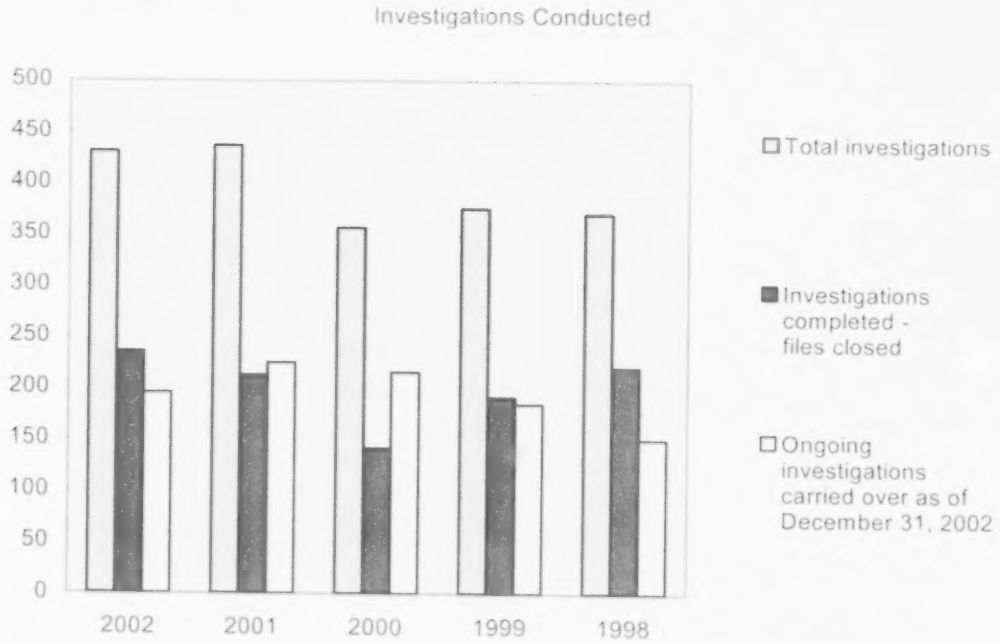

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| Using unnecessary or excessive force sec. 29(a)(ii) | 108 | 111 | 77 | 77 | 80 |
| Using oppressive or abusive conduct or language sec. 29(a)(iii) | 110 | 101 | 59 | 84 | 53 |
| Being discourteous or uncivil sec. 29 (a)(iv) | 107 | 82 | 76 | 71 | 45 |
| Seeking improper personal advantage sec. 29(a)(v) | 0 | 0 | 0 | 1 | 0 |
| Serving civil documents without proper authorization sec. 29(a)(vi) | 0 | 2 | 2 | 0 | 2 |
| Discrimination sec. 29(a)(vii) | 13 | 15 | 12 | 9 | 6 |
| Making false statement(s) sec. 29(b) | 9 | 7 | 3 | 7 | 1 |
| Improperly disclosing information sec. 29(c) | 3 | 2 | 4 | 8 | 2 |
| Failing to exercise care or restraint in use of firearm sec. 29(d) | 0 | 2 | 1 | 1 | 2 |
| Damaging property or failing to report damage sec. 29(e) | 9 | 0 | 7 | 3 | 3 |
| Failing to provide assistance to person(s) in danger sec. 29(f) | 6 | 2 | 1 | 8 | 2 |
| Violating person's privacy (under *The Privacy Act*) sec. 29(g) | 1 | 0 | 1 | 2 | 1 |
| Contravening *The Law Enforcement Review Act* sec. 29(h) | 0 | 0 | 0 | 0 | 0 |

| Table 5: Incidents Alleging Misuse of Pepper Spray | | | |
|---|---|---|---|
| **2002 (n=2)** | **2001 (n=3)** | **2000 (n=1)** | **1999 (n=4)** |
| 1% of 227 complaints investigated<br><br>Winnipeg =1<br>DOPS = 1 | 1% of 225 complaints investigated<br><br>Winnipeg = 2<br>Brandon =1 | .5% of 191 complaints investigated<br><br>Winnipeg =1 | 2% of 218 complaints investigated<br><br>Winnipeg = 3<br>Brandon =1 |

| Table 6: Incidents Alleging Misuse of Handcuffs | | | |
|---|---|---|---|
| **2002 (n=9)** | **2001 (n=11)** | **2000 (n=9)** | **1999 (n=15)** |
| 4% of 227 complaints investigated<br><br>Winnipeg = 7<br>Brandon =1<br>DOPS = 1 | 5% of 225 complaints investigated<br><br>Winnipeg = 8<br>Brandon =3 | 5% of 191 complaints investigated<br><br>Winnipeg =9 | 7% of 218 complaints investigated<br><br>Winnipeg =13<br>Brandon = 2 |

| Table 7: Incidents Alleging Injuries from Use of Force | | | |
|---|---|---|---|
| **2002 (n=71)** | **2001 (n=70)** | **2000 (n=50)** | **1999 (n=56)** |
| 31% of 227 complaints investigated<br><br>Winnipeg =68<br>Brandon = 1<br>DOPS = 1 | 31% of 225 complaints investigated<br><br>Winnipeg = 61<br>Brandon =9 | 26% of 191 complaints investigated<br><br>Winnipeg =47<br>Brandon = 3 | 26% of 218 complaints investigated<br><br>Winnipeg =52<br>Brandon =4 |

| Table 8: Disposition of Complaints | 2002 (n=235) | 2001 (n=212) | 2000 (n=141) | 1999 (n=191) | 1998 (n=220) |
|---|---|---|---|---|---|
| Dismissed by commissioner as outside scope of act | 28 (12%) | 25 (12%) | 11 (8%) | 24 (13%) | 7 (3%) |
| Dismissed by commissioner as frivolous or vexatious | 32 (14%) | 8 (4%) | 1 (0.7%) | 6 (3%) | 61 (28%) |
| Dismissed by commissioner as not supported by sufficient evidence to justify a hearing | 81 (34%) | 72 (34%) | 42 (30%) | 49 (26%) | 72 (32%) |
| Abandoned or withdrawn by complainant | 75 (32%) | 88 (41%) | 65 (47%) | 79 (41%) | 59 (27%) |
| Resolved informally | 8 (3%) | 8 (4%) | 19 (12%) | 22 (12%) | 15 (7%) |
| Public hearing before a provincial court judge | 12* (5%) | 11 (5%) | 3 (2%) | 10 (5%) | 6 (3%) |
| Admission of guilt by respondent officer | 0 | 0 | 0 | 1 (0.5%) | 0 |

***One file had been referred for review of the commissioner's decision in 2001. When the review was held (in 2002), the judge ordered that it be referred to a public hearing. The commissioner referred eleven other files to a public hearing in 2002.**

| Table 5: Incidents Alleging Misuse of Pepper Spray | | | |
|---|---|---|---|
| **2002 (n=2)** | **2001 (n=3)** | **2000 (n=1)** | **1999 (n=4)** |
| 1% of 227 complaints investigated<br><br>Winnipeg =1<br>DOPS = 1 | 1% of 225 complaints investigated<br><br>Winnipeg = 2<br>Brandon =1 | .5% of 191 complaints investigated<br><br>Winnipeg =1 | 2% of 218 complaints investigated<br><br>Winnipeg = 3<br>Brandon =1 |

| Table 6: Incidents Alleging Misuse of Handcuffs | | | |
|---|---|---|---|
| **2002 (n=9)** | **2001 (n=11)** | **2000 (n=9)** | **1999 (n=15)** |
| 4% of 227 complaints investigated<br><br>Winnipeg = 7<br>Brandon =1<br>DOPS = 1 | 5% of 225 complaints investigated<br><br>Winnipeg = 8<br>Brandon =3 | 5% of 191 complaints investigated<br><br>Winnipeg =9 | 7% of 218 complaints investigated<br><br>Winnipeg =13<br>Brandon = 2 |

| Table 7: Incidents Alleging Injuries from Use of Force | | | |
|---|---|---|---|
| **2002 (n=71)** | **2001 (n=70)** | **2000 (n=50)** | **1999 (n=56)** |
| 31% of 227 complaints investigated<br><br>Winnipeg =68<br>Brandon = 1<br>DOPS = 1 | 31% of 225 complaints investigated<br><br>Winnipeg = 61<br>Brandon =9 | 26% of 191 complaints investigated<br><br>Winnipeg =47<br>Brandon = 3 | 26% of 218 complaints investigated<br><br>Winnipeg =52<br>Brandon =4 |

| **Table 8: Disposition of Complaints** | **2002 (n=235)** | **2001 (n=212)** | **2000 (n=141)** | **1999 (n=191)** | **1998 (n=220)** |
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| Dismissed by commissioner as outside scope of act | 28 (12%) | 25 (12%) | 11 (8%) | 24 (13%) | 7 (3%) |
| Dismissed by commissioner as frivolous or vexatious | 32 (14%) | 8 (4%) | 1 (0.7%) | 6 (3%) | 61 (28%) |
| Dismissed by commissioner as not supported by sufficient evidence to justify a hearing | 81 (34%) | 72 (34%) | 42 (30%) | 49 (26%) | 72 (32%) |
| Abandoned or withdrawn by complainant | 75 (32%) | 88 (41%) | 65 (47%) | 79 (41%) | 59 (27%) |
| Resolved informally | 8 (3%) | 8 (4%) | 19 (12%) | 22 (12%) | 15 (7%) |
| Public hearing before a provincial court judge | 12* (5%) | 11 (5%) | 3 (2%) | 10 (5%) | 6 (3%) |
| Admission of guilt by respondent officer | 0 | 0 | 0 | 1 (0.5%) | 0 |

***One file had been referred for review of the commissioner's decision in 2001. When the review was held (in 2002), the judge ordered that it be referred to a public hearing. The commissioner referred eleven other files to a public hearing in 2002.**

| Table 9: Legal Involvement of Complainants | 2002 (n=227) | 2001 (n=191) | 2000 (n=191) | 1999 (n=218) | 1998 (n=167) |
|---|---|---|---|---|---|
| No charges | 107 (47%) | 114 (51%) | 68 (36 %) | 112 (51%) | 66 (39%) |
| Traffic offences | 21 (9%) | 12 (5%) | 15 (8%) | 16 (7%) | 20 (12%) |
| Property offences | 14 (6 %) | 4 (2%) | 15 (8%) | 8 (4%) | 4 (2%) |
| Intoxicated persons detention | 8 (4%) | 12 (5%) | 9 (5%) | 12 (6%) | 8 (5%) |
| Cause disturbance | 3 (1%) | 4 (2%) | 3 (2%) | 1 (0.45%) | 5 (3%) |
| Assault police officer/resist arrest | 17 (8%) | 18 (8%) | 13 (7%) | 6 (3%) | 8 (5%) |
| Impaired driving | 3 (1%) | 3 (1%) | 4 (2%) | 6 (3%) | 6 (4%) |
| Offenses against another person | 12 (5 %) | 6 (3%) | 14 (7%) | 16 (7%) | 12 (7%) |
| Domestic disputes | 5 (2 %) | 6 (3%) | 12 (6%) | 11 (5%) | 6 (4%) |
| Other | 37 (16 %) | 46 (20%) | 38 (20%) | 30 (14%) | 32 (19%) |

| Table 10: Reviews by Provincial Judge of Commissioner's Decision to Take No Further Action | 2002 | 2001 | 2000 | 1999 | 1998 |
|---|---|---|---|---|---|
| | 22 | 13 | 5 | 13 | 10 |

| Table 11: Referrals of Complaint to Crown for Criminal Investigation | 2002 | 2001 | 2000 | 1999 | 1998 |
|---|---|---|---|---|---|
| | 0 | 0 | 1 | 2 | 3 |

| Table 12: LERA Complaints Where Complainant Lodged a Criminal Complaint with Police | 2002 | 2001 | 2000 | 1999 | 1998 |
|---|---|---|---|---|---|
| | 19 | 25 | 22 | 11 | N/A |

| Table 9: Legal Involvement of Complainants | 2002 (n=227) | 2001 (n=191) | 2000 (n=191) | 1999 (n=218) | 1998 (n=167) |
|---|---|---|---|---|---|
| No charges | 107 (47%) | 114 (51%) | 68 (36 %) | 112 (51%) | 66 (39%) |
| Traffic offences | 21 (9%) | 12 (5%) | 15 (8%) | 16 (7%) | 20 (12%) |
| Property offences | 14 (6 %) | 4 (2%) | 15 (8%) | 8 (4%) | 4 (2%) |
| Intoxicated persons detention | 8 (4%) | 12 (5%) | 9 (5%) | 12 (6%) | 8 (5%) |
| Cause disturbance | 3 (1%) | 4 (2%) | 3 (2%) | 1 (0.45%) | 5 (3%) |
| Assault police officer/resist arrest | 17 (8%) | 18 (8%) | 13 (7%) | 6 (3%) | 8 (5%) |
| Impaired driving | 3 (1%) | 3 (1%) | 4 (2%) | 6 (3%) | 6 (4%) |
| Offenses against another person | 12 (5 %) | 6 (3%) | 14 (7%) | 16 (7%) | 12 (7%) |
| Domestic disputes | 5 (2 %) | 6 (3%) | 12 (6%) | 11 (5%) | 6 (4%) |
| Other | 37 (16 %) | 46 (20%) | 38 (20%) | 30 (14%) | 32 (19%) |

| Table 10: Reviews by Provincial Judge of Commissioner's Decision to Take No Further Action | 2002 | 2001 | 2000 | 1999 | 1998 |
|---|---|---|---|---|---|
| | 22 | 13 | 5 | 13 | 10 |

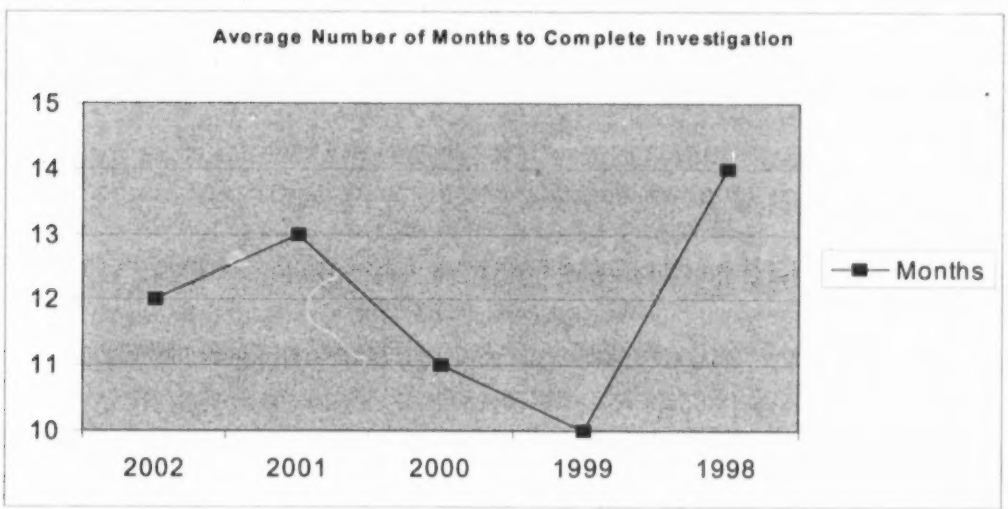
| Table 11: Referrals of Complaint to Crown for Criminal Investigation | 2002 | 2001 | 2000 | 1999 | 1998 |
|---|---|---|---|---|---|
| | 0 | 0 | 1 | 2 | 3 |

| Table 12: LERA Complaints Where Complainant Lodged a Criminal Complaint with Police | 2002 | 2001 | 2000 | 1999 | 1998 |
|---|---|---|---|---|---|
| | 19 | 25 | 22 | 11 | N/A |

| Table 13: Time Span of Ongoing Investigations Carried Over as of December 31, 2002 | | | | | | | |
|---|---|---|---|---|---|---|---|
| YEAR | 1-3 Months | 4-7 Months | 8-12 Months | 13-18 Months | 19-23 Months | 24+ Months | Total |
| 1999 | 0 | 0 | 0 | 0 | 0 | 2 | 2 |
| 2000 | 0 | 0 | 0 | 0 | 0 | 9 | 9 |
| 2001 | 0 | 0 | 6 | 20 | 12 | 0 | 38 |
| 2002 | 63 | 58 | 25 | 0 | 0 | 0 | 146 |
| **Total** | **63** | **58** | **31** | **20** | **12** | **11** | **195** |

| Table 14: Files Concluded in 2002 by Year of Origin | | |
|---|---|---|
| Year | Number of Files | Average Time to Close Investigation |
| 1997 | 1 | 57 months |
| 1998 | 1 | 55 months |
| 1999 | 9 | 34 months |
| 2000 | 42 | 22 months |
| 2001 | 101 | 10 months |
| 2002 | 81 | 4 months |
| Total | 235 | 12 months |

| Table 15: Length of Time to Complete Investigations | 2002 (n=235) | 2001 (n=212) | 2000 (n=141) | 1999 (n=191) | 1998 (n=220) |
|---|---|---|---|---|---|
| 1-3 Months | 46 | 40 | 12 | 19 | 9 |
| 4-7 Months | 51 | 45 | 44 | 71 | 38 |
| 8-12 Months | 58 | 38 | 48 | 54 | 60 |
| 13-18 Months | 29 | 51 | 27 | 25 | 52 |
| 19-23 Months | 23 | 25 | 5 | 7 | 39 |
| 24+ Months | 28 | 13 | 5 | 15 | 22 |
| Average | 12 Months | 13 Months | 11 Months | 10 Months | 14 Months |

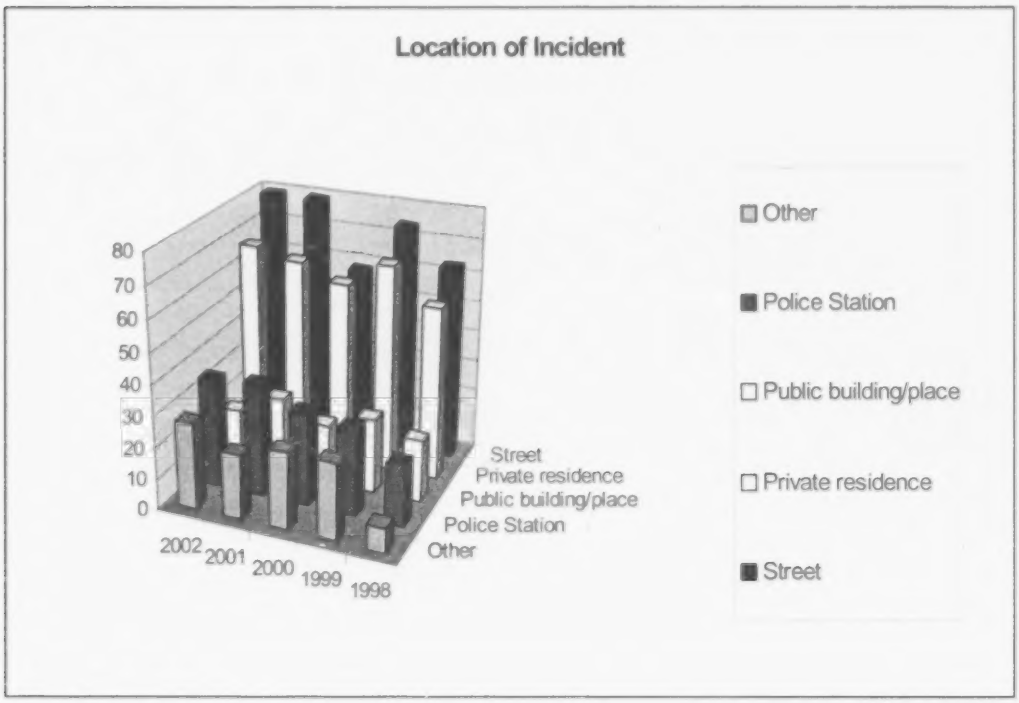


| Table 13: Time Span of Ongoing Investigations Carried Over as of December 31, 2002 | | | | | | | |
|---|---|---|---|---|---|---|---|
| YEAR | 1-3 Months | 4-7 Months | 8-12 Months | 13-18 Months | 19-23 Months | 24+ Months | Total |
| 1999 | 0 | 0 | 0 | 0 | 0 | 2 | 2 |
| 2000 | 0 | 0 | 0 | 0 | 0 | 9 | 9 |
| 2001 | 0 | 0 | 6 | 20 | 12 | 0 | 38 |
| 2002 | 63 | 58 | 25 | 0 | 0 | 0 | 146 |
| **Total** | **63** | **58** | **31** | **20** | **12** | **11** | **195** |

| Table 14: Files Concluded in 2002 by Year of Origin | | |
|---|---|---|
| Year | Number of Files | Average Time to Close Investigation |
| 1997 | 1 | 57 months |
| 1998 | 1 | 55 months |
| 1999 | 9 | 34 months |
| 2000 | 42 | 22 months |
| 2001 | 101 | 10 months |
| 2002 | 81 | 4 months |
| Total | 235 | 12 months |

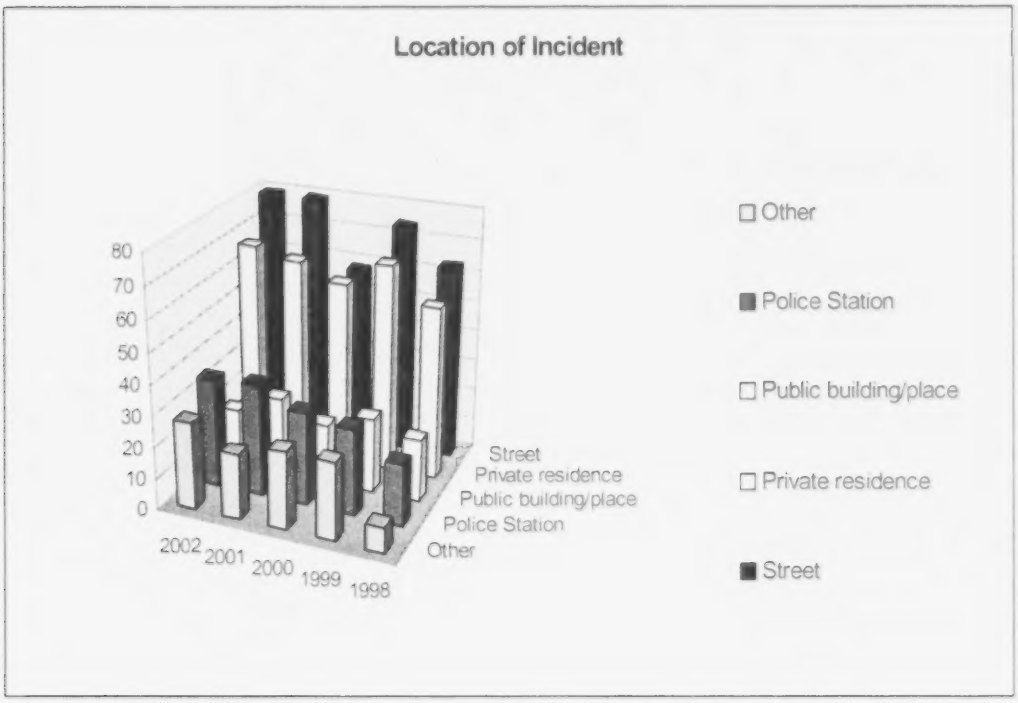
| Table 15: Length of Time to Complete Investigations | 2002 (n=235) | 2001 (n=212) | 2000 (n=141) | 1999 (n=191) | 1998 (n=220) |
|---|---|---|---|---|---|
| 1-3 Months | 46 | 40 | 12 | 19 | 9 |
| 4-7 Months | 51 | 45 | 44 | 71 | 38 |
| 8-12 Months | 58 | 38 | 48 | 54 | 60 |
| 13-18 Months | 29 | 51 | 27 | 25 | 52 |
| 19-23 Months | 23 | 25 | 5 | 7 | 39 |
| 24+ Months | 28 | 13 | 5 | 15 | 22 |
| Average | 12 Months | 13 Months | 11 Months | 10 Months | 14 Months |

| Table 16: Location of Incident | 2002 (n=227) | 2001 (n=225) | 2000 (n=191) | 1999 (n=218) | 1998 (n=167) |
|---|---|---|---|---|---|
| Street | 79 | 79 | 58 | 74 | 63 |
| Private residence | 67 | 64 | 59 | 67 | 56 |
| Public building/place | 18 | 25 | 19 | 24 | 20 |
| Police Station | 35 | 36 | 30 | 28 | 20 |
| Other | 28 | 21 | 25 | 25 | 8 |



| Table 17: Complainant Demographics | 2002 (n=227) | 2001 (n=225) | 2000 (n=191) | 1999 (n=218 | 1998 (n=167) |
|---|---|---|---|---|---|
| **Sex** | | | | | |
| Male | 152 (67%) | 155 (69%) | 133 (70%) | 143 (66%) | 109 (65%) |
| Female | 75 (33%) | 70 (31%) | 58 (30%) | 75 (34%) | 58 (35%) |
| **Age** | | | | | |
| Over 50 | 23 (10%) | 24 (11%) | 25 (13%) | 24 (11%) | 19 (11%) |
| 40 - 49 | 40 (18%) | 44 (20%) | 53 (28%) | 42 (19%) | 36 (22%) |
| 30 - 39 | 53 (23%) | 45 (20%) | 38 (20%) | 55 (25%) | 44 (26%) |
| 18 – 29 | 64 (28%) | 69 30%) | 55 (29%) | 52 (24%) | 41 (25%) |
| Youth under 18 | 14 (6%) | 12 (5%) | 8 (4%) | 13 (6%) | 12 (7%) |
| Birth dates unknown | 33 (15%) | 31 (14%) | 12 (6%) | 32 (15%) | 15 (9%) |

| Table 16: Location of Incident | 2002 (n=227) | 2001 (n=225) | 2000 (n=191) | 1999 (n=218) | 1998 (n=167) |
|---|---|---|---|---|---|
| Street | 79 | 79 | 58 | 74 | 63 |
| Private residence | 67 | 64 | 59 | 67 | 56 |
| Public building/place | 18 | 25 | 19 | 24 | 20 |
| Police Station | 35 | 36 | 30 | 28 | 20 |
| Other | 28 | 21 | 25 | 25 | 8 |



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| Male | 152 (67%) | 155 (69%) | 133 (70%) | 143 (66%) | 109 (65%) |
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| **Age** | | | | | |
| Over 50 | 23 (10%) | 24 (11%) | 25 (13%) | 24 (11%) | 19 (11%) |
| 40 - 49 | 40 (18%) | 44 (20%) | 53 (28%) | 42 (19%) | 36 (22%) |
| 30 - 39 | 53 (23%) | 45 (20%) | 38 (20%) | 55 (25%) | 44 (26%) |
| 18 – 29 | 64 (28%) | 69 30%) | 55 (29%) | 52 (24%) | 41 (25%) |
| Youth under 18 | 14 (6%) | 12 (5%) | 8 (4%) | 13 (6%) | 12 (7%) |
| Birth dates unknown | 33 (15%) | 31 (14%) | 12 (6%) | 32 (15%) | 15 (9%) |

Includes 10% post-consumer waste